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6 Attorneys for Defendants
COUNTY OF LOS ANGELES, CHRISTINA
7 MARTINEZ and CASEY CHESHIER

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 JAMES (JIM) OWENS,

12 Plaintiff,

13 vs.

14 COUNTY OF LOS ANGELES, DEPUTY
MARTINEZ, DEPUTY SHESHIRE, DOES
15 1-10, inclusive,

16 Defendants.

Case No.: CV08-07116 DSF

**ANSWER OF COUNTY OF
LOS ANGELES, CHRISTINA
MARTINEZ and CASEY
CHESHIER TO
COMPLAINT; DEMAND
FOR JURY TRIAL**

17
18 Comes now, defendants COUNTY OF LOS ANGELES, CHRISTINA
19 MARTINEZ and CASEY CHESHIER, answering plaintiff's COMPLAINT on file
20 herein, admit, deny and allege as follows:

21 1. Answering paragraph(s) 1, 2, 7, 80, these defendants admit the allegations
22 contained therein.

23 2. Answering paragraph(s) 3 and 5, no factual allegations are made therein,
24 and on that basis the paragraphs unanswered.

25 3. Answering paragraph(s) 4, 6, 11, 12, 13, 16, 20, 23, 26, 30, 31, 32, 33, 34,
26 36, 37, 38, 39, 42, 44, 45, 46, 47, 48 and 83, these defendants lack sufficient information
27 and belief upon which to answer the allegations contained therein, and on that basis
28

1 deny the allegations.

2 4. Answering paragraphs 8, 9, 14, 15, 17, 18, 21, and 35, these defendants
3 lack sufficient information and belief upon which to answer the allegations contained
4 therein, and on that basis deny the allegations, except for the following allegations
5 which are admitted:

6 Christina Martinez, 471267 (Lennox Station), and Casey Cheshier, 473573
7 (Lennox Station), were acting in the course and scope of their employment and under
8 color of law as Los Angeles County Sheriff's Deputies at the time they encountered
9 plaintiff Owens.

10 Christina Martinez, 471267 (Lennox Station), and Casey Cheshier, 473573
11 (Lennox Station), were acting as employees and deputies with the Los Angeles County
12 Sheriff's Department and were acting in the course and scope of their employment with
13 the Los Angeles County Sheriff's Department at the time they encountered plaintiff
14 Owens.

15 Plaintiff Owens was detained.

16 A deputy got out of his car and detained plaintiff Owens.

17 Plaintiff Owens called out to someone.

18 A female was present for part of the encounter with plaintiff Owens.

19 Plaintiff Owens mentioned something about one of his knees.

20 Deputies left the scene of their encounter with plaintiff Owens.

21 5. Answering paragraph(s) 10, 43, 49, 60, 66, 70, 73, and 78, which
22 incorporates by reference the allegations of other paragraphs of the pleading, Defendants
23 to the same extent incorporate by reference the answers provided herein to those
24 paragraphs.

25 6. Answering paragraph(s) 19, 22, 24, 25, 27, 28, 29, 40, 41, 50, 51, 52, 53,
26 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 68, 69, 71, 72, 74, 75, 76, 77 and 82, these
27 defendants deny the allegations contained therein.
28

1 7. Answering paragraph(s) 67, on information and belief, plaintiff Owens
2 timely filed a government tort claim and timely filed a complaint.

3 8. Answering paragraph(s) 79, the phrase "deemed to sound in negligence"
4 is vague and ambiguous, and answering defendants do not understand its meaning.
5 However answering defendants deny they acted negligently.

6 9. Answering paragraph(s) 81, these defendants deny the allegations
7 contained therein, except for the following allegations which are admitted:

8 One or more answering defendants was told something about one of plaintiff
9 Owens' knees.

10 10. Answering paragraph(s) 1 through 6 of Plaintiff Owens' Prayer For Relief,
11 it is admitted that plaintiff Owens is seeking the damages, fees and relief set forth
12 therein. However, it is denied that plaintiff Owens is entitled to any such damages, fees
13 or relief.

14 FIRST AFFIRMATIVE DEFENSE

15 11. The complaint fails to state a cause of action against defendants COUNTY
16 OF LOS ANGELES, CHRISTINA MARTINEZ and CASEY CHESHER.

17
18 SECOND AFFIRMATIVE DEFENSE

19 12. At the time and place of the occurrence alleged in the complaint, plaintiff
20 failed to exercise ordinary care on his own behalf for his own safety. That negligence
21 caused the injury and damage, if any, that he sustained. Consequently, plaintiff's right
22 to recover should be diminished by his proportional share of fault.

23
24 THIRD AFFIRMATIVE DEFENSE

25 13. Defendants' liability for non-economic damages, if any, is limited to that
26 percentage of those damages which are in direct proportion of defendants' percentage
27 of fault in accordance with Civil Code section 1431.2(a).

FOURTH AFFIRMATIVE DEFENSE

14. Plaintiff's cause of action for negligence is barred or his recovery should be diminished because the alleged damage was caused by the plaintiff's failure to exercise ordinary care on his own behalf for his own safety.

FIFTH AFFIRMATIVE DEFENSE

15. Plaintiff has failed to mitigate the damages, if any, which plaintiff has sustained, and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other things, plaintiff has failed to use reasonable diligence in caring for any injuries, failed to use reasonable means to prevent aggravation of any injuries and failed to take reasonable precautions to reduce any injuries and damages.

SIXTH AFFIRMATIVE DEFENSE

16. Plaintiff's cause of action for negligence is barred or plaintiff's recovery should be reduced because any injuries or damages were proximately caused by the negligence and other legal fault of persons or entities other than defendants.

SEVENTH AFFIRMATIVE DEFENSE

17. At all times pertinent to the complaint, defendants did not have any knowledge of any peculiar susceptibility of plaintiff to damage or injury from emotional distress. Plaintiff's complaint seeks damages for injuries for emotional distress with which a reasonable person, normally constituted, would have been able to adequately cope.

EIGHTH AFFIRMATIVE DEFENSE

18. The causes of action alleged in the complaint are barred by the applicable statutes of limitations, including, but not limited to the provisions of Code of Civil Procedure sections 335.1, 337, 337.1, 337.15, 338(a), 338(b), 338(d), 339, 340(3) and/or

1 343, Insurance Code section 11580.2(g).

2
3 NINTH AFFIRMATIVE DEFENSE

4 19. Plaintiff's recovery is barred for failure to timely comply with the
5 provisions of the claims statutes, including, but not limited to, Government Code
6 sections 901, 905, 905.2, 911.2, 945.4 and/or 946.6.

7
8 TENTH AFFIRMATIVE DEFENSE

9 20. The plaintiff's recovery is barred because public entities and employees are
10 immune from liability for any act or omission while exercising due care in the execution
11 or enforcement of any law.

12
13 ELEVENTH AFFIRMATIVE DEFENSE

14 21. The complaint fails to set forth facts sufficient to constitute a cause of
15 action for punitive damages because a public entity is immune from liability for
16 damages awarded under Civil Code section 3294 or other damages imposed primarily
17 for the sake of example and by way of punishing the defendants.

18
19 TWELFTH AFFIRMATIVE DEFENSE

20 22. The complaint fails to set forth facts sufficient to constitute a cause of
21 action for punitive damages because a peace officer is not liable for punitive damages
22 absent clear and convincing proof of malice, oppression or reckless disregard for
23 plaintiff's rights.

24
25 THIRTEENTH AFFIRMATIVE DEFENSE

26 23. The plaintiff's claim for emotional distress is barred because defendants
27 had no knowledge of plaintiff's susceptibility to emotional distress and plaintiff alleged
28 no more than that which a reasonable person would have been able to adequately cope.

FOURTEENTH AFFIRMATIVE DEFENSE

24. The plaintiff's claim under the Federal Civil Rights Act is barred because common law causes of action do not constitute cognizable claims under 42 U.S.C. § 1983.

FIFTEENTH AFFIRMATIVE DEFENSE

25. The plaintiff's claim under the Federal Civil Rights Act is barred because the complaint fails to allege facts that go beyond mere tortious conduct and rise to the dignity of a civil rights violation.

SIXTEENTH AFFIRMATIVE DEFENSE

26. The County of Los Angeles, a public entity cannot be liable for negligence absent a specific statutory basis.

SEVENTEENTH AFFIRMATIVE DEFENSE

27. Defendants County of Los Angeles, a governmental entity, is immune from liability for negligence absent a specific statutory provision.

EIGHTEENTH AFFIRMATIVE DEFENSE

28. The peace officer defendants are immune from liability for plaintiffs' federal civil rights claims based upon qualified immunity because they did not violate plaintiffs' constitutional rights, and even if plaintiffs' rights were violated, they were not clearly established at the time such that a reasonable peace officer would know his or her actions were wrongful.

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1 WHEREFORE defendants COUNTY OF LOS ANGELES, CHRISTINA
2 MARTINEZ and CASEY CHESHER pray that plaintiff take nothing by this action and
3 that defendants COUNTY OF LOS ANGELES, CHRISTINA MARTINEZ and CASEY
4 CHESHER be awarded costs and all other just relief.

5 Dated: February 13, 2009

6 MANNING & MARDER
7 KASS, ELLROD, RAMIREZ LLP

8
9 By: 
10 L. TREVOR GRIMM, ESQ.

11 Attorneys for Defendants,
12 COUNTY OF LOS ANGELES,
13 CHRISTINA MARTINEZ and
14 CASEY CHESHER

15 **DEMAND FOR JURY TRIAL**

16 Defendants COUNTY OF LOS ANGELES, CHRISTINA MARTINEZ and
17 CASEY CHESHER hereby demand trial of this matter by jury pursuant to Federal
18 Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.

19 Dated: February 13, 2009

20 MANNING & MARDER
21 KASS, ELLROD, RAMIREZ LLP

22 By: 
23 L. TREVOR GRIMM, ESQ.

24 Attorneys for Defendants,
25 COUNTY OF LOS ANGELES,
26 CHRISTINA MARTINEZ and
27 CASEY CHESHER
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